

IN	THE	HIGH	COURT	OF	JUDICATURE	AT	BOMBAY
APPELLATE							SIDE
	WRIT	PETITION	NO.	3463	OF	1997	
1. S/o. President.		Shri. Baburao	Deepak		B.		Korde, Korde,
2. S/o. General	Shri.		Narendra Murlidhar		M.		Hire, Hire, Secretary,
3. S/o. Joint		Shri.	Ramchandra Gopal		G.		Jadhav, Jadhav, Secretary,
4. S/o. Member.	Shri.	Namdeo	Deepak		N. D.		Gaikwad, Gaikwad,
5. S/o. Member.		Shri.	Rajaram Dagadu		D.		Sonavane, Sonawane,
6. S/o.	Shri. (Late)	Brijesh Shri.	Narain	Kumar Das			Shami, Shami,
7. S/o.		Shri.	Ashram Angnudas				Tyagi, Tyagi.
8. S/o.	Shri.	Vijay Chandtrakant		C. N.			Kamble, Kamble,
9. S/o.		Shri. Bandu	Ashok		B. S.		Pawar, Pawar,
10. S/o.		Shri. Shri.	P:rakash Balakdas				Mohile, Mohile,
11. S/o.	Shri.	Rajendra Bhagawant	B. G.				Dhayatkar, Dhayatkar,
12. S/o.		Shri. Dhyaneshwar	Vilas		BL. S.		Bankar, Bankar.
13. S/o.		Shri. Ganesh	Ashok		G. K.		Mane, Mane,

14. Shri. Manik G. Devkamble,
S/o. Govindrao Devkamble,

15. Shri. Kishanrao M. Godbole,
S/o. Marutirao Z. Godbole,

16. Shri. Anil P. Bavaskar,
C/o. Punjo N. Bavaskar.

Vs.

City Corporation & Industrial Development
through its of Maharashtra Limited.
Managing office at Dierctor Vice Chairman and
Point, at Nirmal, 2nd Floor, registered
at CIDCO, Bombay 400 021 and Head Office
B-2, CIDCO, 26-1, Backward Class Employees Union
New Mumbai. ... Respondents Vashi,

Ms. Vaidehi Kamat i/by Mr. M.D. Lonkar for
Petitioner.

Mr. G.S. Hegde for Respondents.

CORAM : F.I. REBELLO &
N.H. PATIL ,JJ.
DATED : APRIL 29, 2004

ORAL JUDGMENT (Per Rebello,J.) :

1. This petition has been filed by the Office
bearers of Association of backward employees
employed with Respondent No. 1. It is the case of
the Petitioners that the Association has been
formed with a view to promote and safeguard the
interest of reserved category employees employed
with the Respondent. To regulate the conditions of
service of employees employed with respondents,
rules have been framed which are called CIDCO

Recruitment Seniority and Promotion Rules. In terms of the policy decision taken by the Respondent No. 1 it had been resolved to apply orders issued by the State of Maharashtra from time to time more particularly with regard to the reservations of posts for the persons belonging to backward classes. In the year 1992, a meeting of the Board of Directors was convened to carry out minor modifications in the promotion policy . It is the case of the petitioner that Respondent No. 1 took a note of the fact that since the time of framing of the Recruitment Seniority and Promotions Rules, in 1978, the union and the individual employees had been protesting against the recruitment in all the cadres by way of direct recruitment. It is the case of the Petitioners that the Board took a practical decision in the matter and decided that the post of and upto the level of Field Officers be filled in by direct recruitment, should be filled in by internal direct recruitment. After carefully considering all issues, the respondent decided to modify the promotional policy with a view to give better deal to the departmental candidates. The decision taken were as under :

"(i) The first promotion from the lowest post in all cadres to the next higher post should be 100% by seniority-cum-merit. There should be no direct recruitment either internal or external at this leave . The promotions should be on seniority-cum-merit basis. After this promotion, if necessary the group of so promoted employees should be given post-promotion training for the sake of better performance.

(ii) "Internal direct recruitment" should be allowed upto the level of Asst. Development Officers (instead of Field Officers) without compromise on the issue of qualification required for the next higher post.

(iii) For second and subsequent promotions upto the level of Assistant Development Officers, Manager (Personnel) should devise a training programme based on the need of the Corporation. That training programme should be conducted and examinations should be held by an outside independent agency. Passing of such examination may be considered for relaxation of qualification required for

promotion. Naturally passing of the examination will be pre-requisite for promotion to the next higher post.

(iv) There shall be no crossing over by any employee to any other discipline or cadre in the Corporation in the matters of promotion.

(v) The roaster of recruitment/promotion for backward class candidates should be fully observed as prescribed by the Government since no relaxation can be allowed in this respect."

. Resolution No. 5565 was passed resolving that the internal direct recruitment should be allowed upto the level of Assistant Development Officers, however, without compromising the basic qualification required for the next higher post.

. It is then averred that pursuant to the reservation policy followed by the State of Maharashtra, certain posts have been ear-marked as per roster for reserved category candidates. The respondent is duty bound to apply the said reservation policy as well as the roster. In view of the law laid down by the Apex Court, roster is

to be operated upon as a running account and petitioners cannot take away any exception thereof. It is the grievance of the Petitioners that neither reservation policy nor roster is being implemented properly and the copy of the roster is not being made available either to the Association or any of the Petitioners. The Petitioner's further grievance is with regard to reservation and roster on the strength of the seniority list issued from time to time in the various cadres right upto Executive Engineer. It is contended that the reserved category candidates have been totally ignored and/or overlooked and even the points kept reserved in the roster for such reserved category candidates have been filled in by making appointments or promotions in favour of general candidates. . It is then set out that the Respondent have not designated the various posts technical and/or non-technical or recognised as gazetted or otherwise. It is then pointed out that the Respondent based on resolution of 23.5.1974 has taken a stand that no reservation exists for promotion from the post of Asst. Executive Engineer to the post of Executive Engineer/A.D.O. to D.O. It is then pointed out that the said stand is arbitrary and illegal. A meeting was convened

by Respondent No. 1 to consider various demands submitted by various Associations including those submitted by the Petitioner No. 1. In the said meeting it was discussed that although for the post of Executive Engineer there is a ratio of 50:50 by way of promotion and nomination, the Respondent has been filling up these posts from the internally available candidates in the same ratio i.e. 50% by promotion on seniority-cum-merit and 50% by merit cum seniority basis. After discussion decision was taken keeping in view the existing stagnation not to advertise the post for the Executive Engineer and that the same should be filled in by internal direct recruitment. It is therefore, set out that considering the resolution, the exercise for filling in the post of Executive Engineers should be done by adopting a criteria of internal direct recruitment. Consequently it was the bounden duty of the respondent in filing the reserved quota also in the same manner. The Respondent it is contended is acting illegally in filling the posts of executive Engineer in both categories namely open and reservation. Earlier occasions various advertisements were issued. The Respondents have exceeded the limit of vacancies mentioned in the advertisement as a result of which representation

of the reserved candidates is not maintained. An advertisement has been issued to fill in the post of Executive Engineer from the open market. It is the case of the Petitioners that Respondent cannot fill in the post by direct recruitment in view of the resolution but they should do it by internal direct recruitment and as such the advertisement issued is arbitrary and illegal. The Petitioners therefore, made representation on 25.6.1995 and 11.9.1995 to ventilate their grievances. The Respondent informed one of the petitioners that the post of Executive Engineer is second promotion in Class I and therefore, in pursuance of Government Resolution dated 23.5.1974 no reservation applies as far as promotion to the said post is concerned. It is submitted that the Respondent being State within the meaning of Article 12 of the Constitution of India, is bound to follow the promotional policy. By not following the same are violating article 14 and 16 of Constitution of India. By not providing for reservation and non implementing roster grave injustice is caused to the Petitioners. It is therefore, submitted that the petitioner is entitled for the reliefs as prayed for by way of declaration that advertisement dated 2.6.1997 is illegal, bad in law and deserves

to be quashed and set aside and to direct the respondents to fill up the backlog of existing vacancies by way of internal direct recruitment. Petitioners therefore, prayed for implementing the reservation policy to provide adequate representation to reserved category candidates and for further direction to fill in the backlog as existing by way of internal direct recruitment as per decision taken in the meeting held on 24.7.1996 and for the further direction that the advertisement dated 2.6.1997 at Exh. G is bad in law and same be quashed and set aside.

2. When the petition came up for admission, the learned Division Bench of this court, while issuing rule was pleased to reject interim relief, except for a direction that respondent shall follow the roster and fill up backlog in making appointments to the post of Executive Engineers from 50% quota from direct recruits.

3. On behalf of the respondents, Mr. Vijay D. Gupte, has filed an affidavit. He is serving as Manager (Personnel) with CIDCO. It is set out that the Association is not recognized by the CIDCO. It is then set out as under :

"In fact the Corporation had issued advertisement in the newspapers thereby calling eligible candidates to apply for the post of Executive Engineer (Civil) strictly in accordance with the rules and policy of the Corporation and Corporation has not violated the reservation policy by calling the applications from the candidates belonging to SC and OBC for these two posts as per the roster. Therefore, the claim of the Petitioner to issue writ under article 226 of the Constitution of India is not tenable and also petitioners are not entitled to claim stay to the direct recruitment through outside for filing up the two vacancies of Executive Engineer (Civil)."

. It is further set out as under :

"I say and submit that CIDCO being Government Company, the Board of Directors have been vested with powers under articles 188 of the article of Association for enabling them to frame rules for creation and recruitment of

various cadres/post. In exercise of the powers vested under article 188 of the Articles of Association the Board of Directors of CIDCO have framed the recruitment schedule for the engineering services (Civil). according to the schedule, the percentage of vacancies to be filled in by way of promotion vis-a-vis Direct Recruitment ratio is 50:50. Due to retirement/promotion in the cadre of Executive Engineer (Civil), presently three posts are fallen vacant. Therefore, as per the approved policy of the Board prescribed in schedule, two posts are to be filled in by way of direct recruitment and as per the roster maintained by the Corporation these posts are to be filled in one from SC category and one post from OBC category. In accordance with the rules framed with the approval of Board for recruitment of posts, CIDCO has issued an advertisement in Marathi and English Newspaper inviting application from the eligible candidates."

. It is also set out that in the advertisement it is also mentioned that if the departmental candidates who are desirous to apply for the post

of Executive Engineer (Civil) the condition of age will be relaxed. The departmental candidates therefore, are not prevented from applying for the post. It is contended therefore, that the contention of the petitioners that the Corporation has failed to implement roster for reservation policy in the matter of employment is totally false and after thought. It is also set out that the contention of the petitioners is that the Respondent is not entitled to fill up the post of Executive Engineer by way of direct recruitment in violation of its policy or rules. It is contended that the said contention is against the true state of affairs. The matter was for consideration before the Board of Directors of CIDCO regarding recruitment of various posts by Internal Direct Recruitment. The Board of Director after due consideration has resolved vide its Board Resolution No. 5565 dated 31.10.1992 that the Internal Direct Recruitment should be allowed upto the level of Assistant Development Officer instead of Field Officer without compromise on the issue of qualification required for the next higher post. The post of Executive Engineer is higher than the post of Assistant Development Officer. Therefore, the policy of Internal Direct Recruitment

determined by CIDCO does not apply for the recruitment of post of Executive Engineer (Civil). It is therefore, set out that there is no restriction on direct appointment of Executive Engineer as the said policy does not apply to the said post. It is further set out that the decision of CIDCO to fill up the post of Executive Engineer (Civil) by way of direct recruitment is perfectly as per the policy and rules of the Corporation and by way of issuance of advertisement, CIDCO has not committed any illegality. Equal opportunities to working Engineers in the Corporation to apply for the post of Executive Engineer along with outsiders and to facilitate the departmental employees, the corporation has already relaxed the age limit.

4. Rejoinder has been filed by Mr. A.A. Tyagi, Assistant Executive Engineer, CIDCO. It is his contention that all that Petitioners are praying for in the writ petition is implementation of policy of reservation as framed by the State of Maharashtra and which is made applicable to the respondent as also the implementation of roster system and implementation of its own rules and policies in the matter of promotion and recruitment to various cadres/posts, more particularly, to the

post of Executive Engineer. It is further set out that the roster is not made available to the employees not it has been displayed on the notice board. It is then set out that the respondents appears to have taken a conscious decision to adopt and implement Government policy regarding reservation in the matter of service conditions of its employees. The Petitioners, it is contended have been taking up the matter as there is backlog existing in various cadres/posts. By not publishing or displaying or making available the roster and not maintaining the required quota of reservation for various categories in various cadres including post of Executive Engineer (Civil), still there exists a backlog which has got to be filled up on priority basis and in accordance with the rules framed by the Government of Maharashtra. Reference is then made to the direction issued by the State of Maharashtra in the matter of revised roster. There are various other averments which need not be adverted to in the first instance.

5. In terms of the relief prayed for by the petitioners, Prayer Clause (a) is to implement reservation as also roster with a view to

adequately represent the reserved category candidates in its service in accordance with policy decision. Prayer Clause (b) is to issue an appropriate writ, order and/or direction under article 226 of the Constitution of India directing the respondent, its agents and/or servants to fill in the backlog as it exists by way of internal direct recruitment as per decision taken in the meeting held on 24.7.1996. and consequential relief is to declare that the impugned advertisement dated 2.6.1997 at Exh. G as illegal and bad in law and the same be quashed and set aside.

6. As earlier noted interim relief was rejected except for the direction that the respondent shall follow roster and fill up the backlog in making appointments to the post of Executive Engineer from direct recruitments.

7. From the averments of the respondents, it is clear that they are following the reservation policy in terms of the G.R. of State of Maharashtra. Once that be the case, really speaking there is no question of granting relief in terms of Prayer Clause (a) but for avoiding of

disputes, it will be necessary to clarify that once the Petitioners are State within the meaning of Article 12 and considering that they have decided to follow the reservation policy as modified by the State Government, respondent is bound to follow the reservation policy including maintenance of roster and filling of backlog. Prayer Clause (a) to that extent can be granted.

8. The real question is whether the relief in terms of Prayer Clause (b) can be granted. The contention as advanced on behalf of the Petitioners is that the post of Executive Engineer (Civil) be filled in by way of Internal Direct recruitment as per the decision taken on 24.7.1996. There are recruitment rules which have been framed by the Respondent. The recruitment rules provide for appointment both by promotion as well as by direct recruitment. The recruitment rules specifically provide that the Government orders in regard to recruitment of technical class candidates and candidates belonging to other specified categories shall be filled. In the year 1992, minor modifications were carried out to promotion policy. In terms of that first promotion from the lowest posts from all cadres to the next higher post shall

be 100% by seniority cum merit. Direct recruitment was to be by internal direct recruitment upto the level of Assistant Development Officer instead of Field Officer without compromising the issue of qualification required for the next higher post. It was further provided that roster for recruitment/promotion from backward class candidate should be observed as prescribed by the Government since no relaxation can be allowed in this respect. At the meeting held on 26.7.1996, with the CIDCO association and what was recorded on that date in terms of Exh. F to the petition is as under :

"In this regard Jt. M.D. pointed out that although for the post of E.E. there is a ratio of 50:50 by way of promotion and recruitment in actual practice, management has been filling up these posts from the internal available candidates in the same ratio i.e. 50% by promotion on seniority cum merit and 50% by merit cum seniority basis.

Jt. M.D. explained that keeping in view the stagnation, it will be considered not to advertise, E.E.'s post and it will be filled

by internal direct recruitment, but if no suitable qualified candidate is available internally then advertisement will be issued for recruitment from open market."

. As may be noted these are the minutes of the meeting held by the Jt. Managing Director with CIDCO Association. This is not a resolution passed by the Board of Directors of CIDCO to amend the recruitment rules namely CIDCO Recruitment Seniority and promotion rules, 1997. It is therefore, clear that the petitioners merely based on minutes of the meeting between the Jt. M.D. and the Engineers Association cannot claim that the post of Executive Engineers are also to be filled in by internal direct recruitment. The modified policy of 31.1.1992 only provided for internal direct recruitment upto the level of Assistant Development Officer instead of Field Officers. In the absence of any resolution of the Board of Directors no legal effect can be given to the minutes recorded in meeting held between Jt. M.D. and the Engineers Association. Giving effect would be contrary to the Recruitment rules in force. In other words, the respondents were right in

advertising for the post of Executive Engineers. That action cannot be said to be arbitrary and or illegal or contrary to the recruitment rules in force. The relief on that count will have to be rejected.

10. We must however, express grave anxiety at the manner in which the respondents are filling up the post meant for direct recruits. As long as the rule subsists, recruitment must meet requirements and satisfy the test of article 14 and 16 of the Constitution of India. The rules provide for direct recruitment. What that means is that all eligible citizens eligible to apply must have fair chance of being considered for selection to the post by way of direct recruitment. The respondents cannot in the matter of direct recruitment resort to what they describe as internal direct recruitment. This will be contrary to the mandate of Article 14 and 16 of the Constitution of India which the Respondent as State within the meaning of Article 12 of Constitution is bound to comply. Merely because there are pressures from organized group of employees cannot result in depriving those others eligible from being considered for the appointment. It is true that we are only

considering the petition filed by the petitioners and the reliefs prayed therein. We however, cannot on the fact of the material placed before us countenance a system which is clearly arbitrary. Internal direct recruitment is creating a monopoly in favour of those who happened to be employed first.

10. We may advert to Rule 9 of the Recruitment Rules framed which provide that the post intended to be filled in by direct recruitment shall be notified to the local employment exchange and advertised either by notice in newspapers or by circular letters or otherwise, as may be considered appropriate by the Appointing Authority in consultation with the Selection panel. The resolution of 31.1.1992 sets out that due to stiff opposition, the Corporation had not been able to appoint outside candidates by way of direct recruitments in various disciplines and in these circumstances the corporation cannot keep the posts meant for direct recruitment vacant for years together and also that most of the Departmental candidates do not have the requisite qualification for direct recruitment, but were being precluded from consideration because the posts were meant for

direct recruitment, the Board took a practical decision in the matter and decided that the posts of and upto the level of Field Officers to be filled in by direct recruitment, should be filled in by way of internal direct recruitment vide its Resolution No. 1686 dated 31.1.1979. Further Paragraph 5 sets out that the ratio prescribed for direct recruitment and promotion were being retained subject to modification that in respect of specified categories upto the level of Field Officers only those posts reserved for Backward Class candidates according to Govt. orders and those which cannot be filled in by appointing eligible employees included in the select list should be advertised and in that context the internal direct recruitment upto the level of Assistant Development Officer instead of Field Officers without compromising the issue of qualification required for the next higher post was agreed to.

. In our opinion merely because a group of employees are resisting direct recruitment in the legal manner provided cannot mean that the respondents are helpless and have to accept what the employees demand. Article 14 and 16 of the

Constitution of India must be followed in letter and spirit. The procedure of internal direct recruitment is against the constitutional mandate and should be discontinued by Respondents. At the highest for internal candidate if otherwise eligible there can be age relaxation.

12. Considering the above, the following order :

(1) Considering the fact that the respondents themselves in the recruitment rules have provided for following the government orders in regard to recruitment of backward class candidates and candidates belonging to other specified categories and further as the roster system is followed, the relief as prayed for really does not survive. However, considering the contention we direct the respondent to follow the roster and fill in the backlog if there be a backlog in existence. The Respondents annually in the first week of January of each year to disclose the vacancies in terms of the roster and the backlog if any.

(2) We further direct respondents to fill in the post by way of direct recruitment by following the constitutional mandate of Article 14 and 16, so

that all eligible persons are eligible for consideration where the posts are to be filled in by way of direct recruitment.

. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)

(N.H. PATIL, J.)